

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

SOUTH AUSTIN PHARMACY, LLC

Plaintiff,

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v.

Civil Action No. 1:15-cv-00271

PHARMACISTS MUTUAL
INSURANCE COMPANY

Defendant.

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**DEFENDANT'S RESPONSE TO PLAINTIFF'S OBJECTIONS TO
REPORT AND RECOMMENDATIONS OF THE
UNITED STATES MAGISTRATE JUDGE**

To the Honorable United States District Judge:

DEFENDANT PHARMACISTS MUTUAL INSURANCE COMPANY (“Defendant”) FILES THIS Response to Plaintiff’s Objections to Report and Recommendations of the United States Magistrate Judge [#28] pursuant to Federal Rule of Civil Procedure 72(b) and in support thereof respectfully shows to the Court as follows:

1. The Report and Recommendation of the United States Magistrate Judge (“Report and Recommendation”) correctly determined that the District Court should deny both the Motion for Leave to File First Amended Complaint [#9] and the Motion to Remand [#10]. *See* Report and Recommendation, III.
2. The only specific written objection filed by Plaintiff states that the Report and Recommendation failed to make any specific recommendations as to Plaintiff’s request that the Court direct the 53rd Judicial District Court of Travis County, Texas to sever the state law claims against Mr. Grant W. Guthrie into a separate action. *See* [#29]

Plaintiff's Objections to Report and Recommendation of the United States Magistrate Judge, II. and IV. ("Plaintiff's Motion"). The objection and request are without merit.

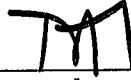
3. Plaintiff urges this Court to direct the state court to sever nonexistent claims against Mr. Guthrie from an action in which he is not a party. Plaintiff only named Defendant Pharmacists Mutual Insurance Company in its Original Petition filed on February 20, 2015. As explained in the Objections to Report and Recommendations of the United States Magistrate Judge [#28], Plaintiff sought to amend its state court pleadings to join Mr. Guthrie only after Defendant filed its Notice of Removal [#1] on April 9, 2015. Defendant's removal notice effectuated the removal from state court and prevented the state court from proceeding further unless and until the case is remanded. See 28 U.S.C. § 1446(d); *Linton v. Johnson*, 2011 WL 65867, at *2 (W.D. Tex. 2011). Therefore, Defendant was the only state court defendant upon removal and there are no state court claims pending in state court to sever against Mr. Guthrie.

4. The Report and Recommendation suggested that Plaintiff can pursue claims against Mr. Guthrie in a separate state court proceeding. See [#28] Report and Recommendation, II.B.IV.

WHEREFORE, PREMISES CONSIDERED, Defendant Pharmacists Mutual Insurance Company respectfully requests that the Court deny the relief requested within Plaintiff's Motion, adopt the Report and Recommendation of the United States Magistrate Judge in its entirety, enter a ruling denying the Motion for Leave to File First Amended Complaint, the Motion to Remand, and the Motion to Sever and further grant Defendant any all further relief, whether at law or in equity, to which it may be justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of June, 2015 a true and correct copy of the foregoing document has been served on counsel of record in accordance with the Federal Rules of Civil Procedure.

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